

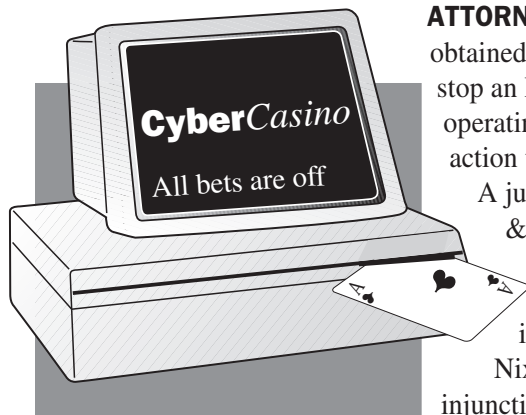
FRONT LINE

June 1997

OFFICE OF MISSOURI ATTORNEY GENERAL

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AG's Office shuts down online casino



ATTORNEY GENERAL Jay Nixon has obtained the first ruling in the country to stop an Internet gambling casino from operating in Missouri and has taken action to stop an online lottery.

A judge ordered Interactive Gaming & Communications Corp. to stop taking online bets from Missourians and pay \$66,050 in penalties and costs to the state.

Nixon obtained the permanent injunction against the Pennsylvania

company after it violated state gambling and consumer laws by misrepresenting to an undercover investigator in the AG's Office that it was legal to operate these games in Missouri. IGC also accepted a bet from the investigator.

Nixon also sued an Idaho Indian tribe and the operator of its Internet site to keep them from marketing and offering gambling to Missourians. Coeur D'Alene tribe and UniStar Entertainment of Colorado are named as defendants.

U.S. Supreme Court to hear pursuit liability case

THE U.S. SUPREME COURT has agreed to hear a case that could substantially impact police officers and their potential liability for injuries caused during pursuits.

A federal appeals court in California ruled that an officer could be held liable under federal civil rights law for a teen-ager's death caused from injuries sustained while riding a motorcycle being chased by the officer. The court ruled the officer acted with "reckless disregard" and violated the teen's constitutional rights.

Historically, a plaintiff has not been able to sue in federal court for an alleged civil rights violation arising out of pursuits. These suits have been filed in

state courts as negligence claims.

Missouri law gives officers a great deal of protection from such lawsuits. Generally, if an officer was using emergency equipment such as sirens, the officer had "official immunity" from suit except in cases of gross misconduct.

That state protection will change if police pursuits become potential civil rights violations.

Already, pursuits essentially have been eliminated as a means of apprehension in several states and jurisdictions. If pursuits become actionable as a civil rights violation, Missouri may quickly find itself with similar limitations. Front Line will report the ruling.

Car repossession

Officer could be liable

A STATE APPEALS COURT has ruled that a police officer could be held liable for a civil rights violation when he helped repossess a car.

A car dealer had sought to repossess a car with an officer's help to "keep the peace." An individual can, without a court hearing or order, repossess a car if it can be done without a "breach of the peace."

Police cannot assist when a breach of the peace occurs, according to *Brouning v. White*, 940 S.W.2d 914 (Mo.App., S.D., 1997).

A debtor is entitled to minimal due process before the government may assist a creditor in a repossession.

When the dealer and officer arrived to repossess, an argument ensued. The court ruled this created a breach of the peace at which time the officer had no right to assist. The court indicated the officer should have left and insisted the reposessor leave too.

**LEGISLATIVE
UPDATE**



Front Line lists bills approved by the legislature:
Pages 2-4

LEGISLATIVE
UPDATE

Several measures that would affect the law enforcement community have been approved by the legislature. If signed by the governor, these bills will become effective Aug. 28 unless a bill contains an emergency clause.

Designates bills that have been signed.



SENATE BILLS

REGIONAL JAILS

SB89 permits the sheriff or chief operating officer of a county jail or correctional facility to deny visitation privileges to or refer to the county prosecutor any person who delivers or tries to deliver prohibited items to jailed persons.

Violation is an infraction if not covered by other statutes. The bill also:

- Makes it a class D felony for someone to knowingly damage or set fire to city or county jail property.
- Amends sections 562.021 and 562.026 regarding culpable mental states.

SB218 includes language similar to SB89 by restricting visitation privileges of individuals and provides for the class D felony of knowingly damaging jail property.

PROBATION AND PAROLE

SB367 allows probation and parole officers who meet requirements to carry firearms. It exempts probation and parole officers from unlawful use of a weapon.

It also expands the crime of tampering with a judicial officer to include interference in the performance of an officer's official duties and stalking of an officer or his family.

Bill would reform prison litigation, allow prosecutor to appeal mental fitness ruling

SB56 will make several changes to criminal procedure:

Sex offender information: The bill makes the name, address and offense of a sex offender a public record. A local law enforcement agency shall provide this information to anybody on request.

Crimes against children: The bill creates the crime of sexual misconduct involving a child as a class D felony and makes the crime of child abuse a class A felony when the abuse results in the child's death.

Prisoner litigation: A prisoner who sues will have to pay the full filing fee unless he is indigent, at which time the court will assess a partial payment. The court can dismiss a suit if the litigation is frivolous, the defendant is immune from the cause of action or the prisoner has falsely claimed to be indigent. The court can order an inmate filing a frivolous suit to pay attorney fees and court costs.

Death penalty cases: SB 56 provides for appointment of defense counsel in capital cases.

Mental fitness of defendant provisions include:

■ The state may appeal a court determination that the accused lacks mental capacity to proceed to trial pursuant to Section 552.020.

■ A court may impanel a jury to determine a defendant's mental fitness to proceed to trial after either party or the court requests a second psychological exam of the accused. The accused is presumed to have the mental fitness to proceed, and the party raising the issue has the burden of proof by a preponderance of evidence.

■ Criminal charges may be dismissed without prejudice based on a finding that the accused lacks mental fitness to proceed, as long as civil commitment proceedings have been properly filed.

■ The statute of limitations may be tolled for any offense for which an accused has been charged when the accused lacks mental fitness to proceed and a court may declare a mistrial if the question of the accused's mental fitness to proceed is raised after a trial jury is impaneled.



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■ **Attorney General:** Jeremiah W. (Jay) Nixon

■ **Editor:** Ted Bruce, Deputy Chief Counsel for the Criminal Division

■ **Production:** Office of Communications
Office of the Attorney General
P.O. Box 899, Jefferson City, MO 65102

SENATE BILLS

HIV

SB347 makes it a class D felony for any person knowingly infected with HIV to donate blood products or recklessly expose another person without knowledge or consent to contact with blood, sexual activity or by sharing needles.

The bill also:

- Makes it a class C felony if an HIV-infected person is 21 and infects a person younger than 17.
- Defines “prostitution-related offense” and “persistent prostitution offender.” Anyone convicted as a persistent prostitution offender is guilty of a class D felony.
- Allows a court to require a person arrested for prostitution who has been convicted of or pleaded guilty to a prostitution-related offense to undergo HIV testing. A judge may order a person convicted of or pleading guilty to prostitution to be treated for drug or alcohol abuse.

LEGISLATIVE UPDATE



MENTAL HEALTH PATIENT FILES

SB 97 provides that the records of a person acquitted based on a finding of mental disease or defect shall be closed records but shall be available to law enforcement and child-care agencies and certain residential-care facilities. The Department of Mental Health will be required to check for criminal records on current or potential staff members who provide direct patient care for patient abuse or neglect violations.



COMMUNITY CORRECTIONS

SB430 authorizes the

Department of Corrections director to establish a restorative justice program within facilities and requires the department to establish local sentencing alternatives.

CHILD SUPPORT ENFORCEMENT

SB361 makes comprehensive changes to child support enforcement in compliance with the welfare reform law.

COURTS

SB248 makes provisions for allowing court records including indictments and information to be stored in an electronic form. For example, pleadings will be “attributed” to an attorney rather than physically signed by the attorney. It repeals the provision that a probation revocation hearing is an independent proceeding.



EMERGENCY SERVICES

SB133/HB95 creates a class B misdemeanor to misuse “911” emergency telephone services.

Bill makes extensive changes to pawnbroker law

IF SIGNED by the governor, **SB142** would allow a person to recover stolen property held by a pawnbroker by first notifying the pawnbroker in writing of the claim and, if unresolved after 10 days, filing a petition in a circuit or small claims court.

The pawnbroker may simultaneously bring an action against the individual who pledged or sold the property.

If the property is stolen, the court will return it to the original owner who may recover legal costs from the pawnbroker. The pawnbroker may, in turn, recover all costs associated with the action from the individual who

brought in the property.

If the court finds that the person claiming to be the original owner is not entitled to the property, that person is liable for costs incurred by all parties to the action. The bill establishes a similar procedure for reimbursing customers who unknowingly bought stolen goods from a pawnbroker.

The bill also:

- Increases penalties for fraudulently pledging or selling property. It is a class A misdemeanor when the property value is \$50 to \$150 and a class C felony when the value is \$150 or more.
- Allows police officers to inspect a

pawnbroker’s property without a warrant if they make a request and proceed with minimal interference during regular business operations.

- Establishes procedures for an officer to issue a hold order on property held by a pawnbroker when there is probable cause to believe it has been stolen. An officer may place a hold order for up to two months and have it extended. Currently, a prosecuting attorney can issue the order.
- Requires pawnbrokers to release to law enforcement, on written request, property subject to a hold order that is needed for a criminal investigation. The property must be returned at the close of the investigation.

HOUSE BILLS

LAW ENFORCEMENT

HB69 et. seq. authorizes certain law enforcement officers who are POST certified to respond to emergency situations outside their jurisdiction. An officer may make a warrantless arrest on view anywhere in the state of any person committing a dangerous felony or using physical force or forcible compulsion that causes or creates a substantial risk of death or serious injury.

The bill addresses certain provisions for federal law enforcement officers.

SEX CRIMES

HB104 amends Section 556.037 by creating a 10-year statute of limitations to prosecutions for unlawful sexual offenses involving a person 18 or younger to be commenced within 10 years after the victim turns 18.

LANDLORD-TENANT

HB361 details procedures on adjudicating eviction proceedings based on alleged criminal activity on leased premises. The bill grants jurisdiction to prosecuting attorneys to bring civil actions for violations of Section 441.710 to 441.880.

The bill also allows landlords to perform some court-ordered evictions and establishes a landlord-tenant court in St. Louis city and Jackson County.



INVASION OF PRIVACY

HB300 makes a technical correction to invasion of privacy under Section 565.250.

LEGISLATIVE
UPDATE

WITNESS IMMUNITY

HB339 allows a court, on written request by a prosecuting attorney, to order a witness to testify or produce other information an individual refuses to provide based on the Fifth Amendment privilege against self-incrimination.

The witness will be immune from criminal prosecution for any act that is the subject of the order.

However, the witness may be prosecuted for perjury, giving a false or misleading statement or contempt committed in answering or failing to answer, or in producing or failing to produce evidence.

The prosecutor may be granted the order only on approval of a verified application for witness immunity by a judge not involved with any other part of the criminal proceedings, including grand jury.

A witness defying the order may be found in contempt and jailed until he complies or until the trial ends, not to exceed one year.

CONTROLLED SUBSTANCE

HB635 revises the controlled substance schedules and makes theft of any controlled substance a class C felony.

It also provides that a controlled substance analogue shall, to the extent intended for human consumption, be treated for the purpose of any state law as a controlled substance in Schedule I.

INMATES

HB820 makes it a class A misdemeanor for an inmate or a juvenile under detention with a specific intent to throw, toss or expel blood, seminal fluid, urine or feces on a known or perceived employee of the Department of Corrections, Department of Mental Health or a law enforcement agency.

SEX OFFENDER REGISTRATION

HB883 repeals the current sex offender registration statutes and places them in Chapter 589 with more requirements. The bill requires registration with law enforcement by an offender convicted of:

- kidnapping;
- promoting prostitution in the first, second and third degree;
- incest;
- child abuse;
- use of a child in sexual performance; or
- promoting sexual performance by a child with another minor as the victim.

CONVENIENCE STORES

HB141 makes it a class C misdemeanor to fail to include required security procedures in convenience stores.

PROBATION REVOCATION

HB265 repeals Section 559.027, which made a probation revocation hearing an independent proceeding.

AMUSEMENT RIDES

HB276 creates a class A misdemeanor for certain provisions requiring safety on amusement rides.

UPDATE: CASE LAWS**SUPREME COURT****State v. Danny Hendricks**

No. 79513

Mo.banc, April 29, 1997

The court upheld the defendant's conviction of selling a controlled substance under Section 195.211 where the defendant offered to sell a drug he did not actually possess.

The defendant's sister sold cocaine to a detective. Shortly after, the defendant said he could sell the agent more cocaine. The detective did not buy more drugs, but the defendant was later charged and convicted of selling a controlled substance. The defendant did not possess the drugs at the time.

The defendant argued that although the state proved the defendant solicited the detective, no evidence was established that the appellant had access to the drug. The majority opinion affirmed the conviction, citing the appellant had not supported his claims and developed his arguments. The court did not address substance of the claim.

State v. Dennis J. Skillicorn

No. 78864

Mo.banc, April 29, 1997

In this capital murder case, the court did not err in refusing to admit a co-defendant's statement to an FBI agent as a statement against penal interest. The statement did not meet the requirements of *Chambers v. Mississippi*, 410 U.S. 284 (1973), since:

- Each statement must be self-incriminatory and unquestionably against interest;
- Each statement must spontaneously be made to a close acquaintance shortly after the murder occurred; and
- The statements must be corroborated by other evidence.

The trial court properly admitted evidence of crimes committed by the

defendant and co-defendant after they were charged with murder. The state was required to prove the element of deliberation, which was disputed by the defendant.

The challenged evidence was a continuation of the sequence of events that presented a coherent picture of the crime. The events occurred only hours after the murder as the two defendants were escaping. It also helped to establish the defendant's deliberation in that he aided in the murder.

The trial court also properly admitted postcards the two defendants wrote while on the run. They were not offered for the truth of the matter asserted but to show the co-defendants were acting as a team.

WESTERN DISTRICT**State v. Warren J. Slavin**

No. 50624

Mo.App., W.D., April 29, 1997

The court reversed the conviction because the trial court erred in denying a motion to suppress marijuana seized during a traffic stop.

A state trooper had stopped the defendant for a routine traffic stop. After the defendant was given a warning and the traffic stop had ended, the trooper asked for consent to search. When the defendant refused, the trooper interpreted the defendant as expressing apprehension.

The trooper did not search, but called for a canine unit. The trooper indicated the defendant had been cooperative until the search was requested, at which time he appeared nervous.

The dog circled once without result. When the trooper had him circle again, the dog pawed the truck. The search uncovered 80 to 100 pounds of pot.

The court ruled there was not reasonable suspicion to continue to detain the defendant once the stop had ended. The court could not rely on the fact that the defendant did not consent to

a search. Other factors expressed by the trooper did not support reasonable suspicion since the court believed the trooper's testimony differed regarding these facts.

State v. Robert L. Morrow

No. 50160

Mo.App., W.D., March 25, 1997

There was sufficient evidence of the defendant's conviction of two counts of kidnapping.

The defendant had stopped at the victims' home and said he wanted to buy a car. One victim accompanied the defendant outside where, following a struggle, was forced at gun point to re-enter the house. The second victim was forced to go into a bedroom, robbed and then forced back into the living room.

There was sufficient evidence that by moving the first victim back into the house, a greater risk of harm was created. Forcing the second victim back into the living room and tying her up amounted to confinement designed to facilitate the robbery. The harm that the kidnapping statute is intended to address also includes victims' terror, which was suffered.

SOUTHERN DISTRICT**State v. Floyd Roberson**

No. 21001

Mo.App., S.D., March 21, 1997

There was sufficient evidence of the defendant's conviction of second-degree drug trafficking.

The defendant argued that the drugs were found in a house "jointly possessed" by him and his girlfriend. The girlfriend testified that when she and the defendant left the house earlier that day, there was no cocaine in the house. The doors were locked when they left and only the defendant had the key. When officers searched the house later that day, the

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UPDATE: CASE LAWS

CONTINUED from Page 5

doors were locked and no one was inside. Since only the defendant had a key, he had exclusive control over the house during the brief time cocaine was in there. Therefore, there was sufficient evidence of his guilt.

State v. Steven Frappier

No. 20868

Mo.App., S.D., April 4, 1997

There was sufficient evidence of the defendant's conviction of involuntary manslaughter of his 3-month-old son. The defendant admitted to picking up the baby by the neck and shaking and throwing him onto a bed to stop him from crying. The defendant argued such evidence would prove he intended the

act and would not show recklessness.

However, the jury could have found that while trying to quiet rather than kill the child, the defendant acted recklessly, causing the death.

The defendant also argued there was no testimony establishing that the baby's circulation was artificially maintained and therefore his death could not have occurred until there was an irreversible cessation of respiration and circulation as required by Section 195.005, RSMo.

Thus, the defendant argued the proximate cause of death was the removal of life-support system rather than the defendant's action. A physician's testimony showed that the baby's circulation also was artificially maintained and therefore was legally dead upon the doctor's determination that he was brain-dead in accordance with Section 194.005.2.

State v. Ward Leitner

No. 20595

Mo.App., S.D., April 17, 1997

In a prosecution for second-degree murder of the daughter-witness's mother, the trial court did not err in admitting evidence that the defendant had beaten the victim's daughter a few days before the murder.

The daughter had seen the murder but initially made inconsistent statements.

The daughter later told police the defendant had beaten her. Evidence of the daughter's beating was relevant to show why the daughter made the first inconsistent statement: she feared the defendant.

Elizabeth Ziegler, executive director of the Missouri Office of Prosecution Services, prepares the Case Law summaries for Front Line.